IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WP(C).No. 16069 of 2007(K)

PETITIONER:

KODIYATHUR CO-OPERATIVE URBAN SOCIETY LTD. NO.D.2744, KODIYATHUR, CHERUVADY P.O., VIA-MAVOOR, KOZHIKODE DISTRICT, REPRESENTED BY THE PRESIDENT OF THE MANAGING COMMITTEE.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT:

THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (G), KOZHIKODE.

BY GOVERNMENT PLEADER (SHRI P. N. SANTHOSH)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 16069 OF 2007 K

Dated this the 29th May, 2007

JUDGMENT

This Writ Petition is filed by a Co-Operative Society, challenging Ext.P1 which is a Notice purported to be issued under Section 32 of the Kerala Co-Operative Societies Act, seeking explanation from the petitioner. Case of the petitioner, in brief, is as follows:

Registration was given to the petitioner as an Urban Co-Operative Bank by the Registrar of Co-Operative Societies and resultantly the Society issued cheque books and issued Fixed Deposit receipts to the Members and persons who deposited money in the Bank. But the RBI resisted employment of the word "Bank". This resulted in Writ Petitions being filed before this Court and this Court also took the view that the Societies cannot use the name "Bank". It is the petitioner's case that thereupon the nomenclature "Bank" was deleted and the Societies were registered as Urban Co-Operative Societies in the

year 2003. It is stated that the cheque books and deposit receipts issued between 2001 and 2003 are still with the depositors, and when those cheque leaves were presented, necessary corrections are made in the cheque leaves and the word "Society" is affixed in the cheque leaves. This was the only remedy to make corrections in the cheque leaves and receipts held by the depositors. After 16.4.2003, the Society has not issued any cheque book describing the same as a Bank and it contained the name of the Society. The FD receipts issued to the Members after 16.4.2003 also are in the name of the Society, it is stated. It is the case of petitioner that the District Committee Member of CPM, who is also the President of the Kodiyathur Service Co-operative Bank, has made a complaint before the Minister for Co-Operation alleging that the petitioner Society is using the word "Bank" in the cheque leaves and has printed calendar describing the Society as an Urban Co-operative Bank. It is stated that the said complaint is politically motivated and the allegations are incorrect. It is stated further that an enquiry was

ordered and the Assistant Registrar was appointed as the Enquiry Officer, who deputed his subordinates and a Report was obtained containing misleading statements. It is thereupon that Ext.P1 was issued.

2. Heard the learned counsel appearing for the petitioner and also the learned Government Pleader.

3. Learned counsel for petitioner would contend that this is a clear case where Ext.P1 is issued without being satisfied even tentatively that supersession is called for. He would further contend that the matters alleged in the Notice took place prior to the present Committee assuming power which it did on 26.12.2006. In this regard, he relied on a Judgment of this Court in Sivadasan Nair v. Registrar of Co-operative Societies (1997 (2) KLT 710). He made reference to Ext.P1 from the office of the Minister and pointed out that all was not well and the petitioner cannot expect justice from the respondent. Counsel would contend that as even after the explanation, if an order is passed, it could not possibly furnish a ground for passing an

order against the petitioner in which case this Court should not desist from interfering at this stage and prevent the misuse of the power under Section 32. Per contra, learned Government Pleader would contend that after all, all was done is the issuance of Ext.P1 which is only a notice. Petitioner need not presume that the Authority will not consider its objection or the materials it wishes to produce, he submits. He relied on the decision of the Apex Court in Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and Others ((1996) 1 SCC 327), wherein the Apex Court held as follows:

> *"For entertaining a writ petition under Article 226 of the Constitution of India against a show cause notice, at that stage, it should be shown that the authority has no power or jurisdiction, to enter upon the enquiry in question. In all other cases, it is only appropriate that the party should avail of the alternate remedy and show cause against the same before the authority concerned and take up the objection regarding jurisdiction also, then. In the event of an adverse decision, it will certainly be open to*

> *him to assail the same either in aappeal or revision, as the case may be, or in appropriate cases, by invoking the jurisdiction under Article 226 of the Constitution of India."*

Learned Government Pleader has also relied on the decision of a Division Bench of this Court in Narayanan Nair v. Vaikom Palliprathusserry Service Co-operative Bank (2003 (2) KLT 44) to contend that this Court should not pass any protective order.

4. I would think that there is some merit in the contention of the Government Pleader. Admittedly, Ext.P1 is only a notice. I need not at this stage interfere. I need not presume that the Statutory Authority will not apply the law of the land declared in a long line of decisions as to the circumstances in which an order under Section 32 can be passed. I am sure that as a Statutory Authority, it is his bounden duty to bear in mind the boundaries of his power and not to over-step the same. The Statutory Authority is not a mouth-piece of the political party in power. He is expected to act fairly on the basis of the materials produced before it and strictly in accordance with the law laid

down by the Courts. I am sure that the respondent will not give rise for any such complaint in this case also. Petitioner will be free to place its explanation, produce materials and any other evidence as it seeks before the respondent who will consider it and take a decision strictly in accordance with law. I feel that this would be the most appropriate safeguard which, in fact, is what the law provides for and which I feel would satisfy the interest of justice. In such circumstances, I feel that the petitioner has not made out a case for interference with Ext.P1 notice as such.

The Writ Petition is accordingly dismissed.

kbk. **K. M. JOSEPH, JUDGE**